



MINNESOTA TEAMSTERS PUBLIC & LAW ENFORCEMENT EMPLOYEES' UNION, LOCAL NO. 320



AFFILIATED WITH
International Brotherhood of Teamsters

Susan E. Mauren
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John Avery
Trustee

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June 8, 2006

Ms. Sue Dosal, State Court Administration
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: TRANSCRIPT RATES

Dear Ms. Dosal:

The Court Reporter Stewards and I would like to thank the Judicial Council for agreeing to a continuance for consideration of this matter. We appreciate their accommodating our request. The Steward Committee recently met and discussed the issue of transcript rates. At this time, the Union requests a rate increase for Sexual Psychopathic Personality/Sexually Dangerous Person transcripts.

As the enclosed materials prepared by Official Court Reporter/Tenth Judicial District Steward Jane Schleusner illustrate, transcripts for Sexual Psychopathic Personality/Sexually Dangerous Person hearings are very difficult to prepare. Testimony entails highly technical, statistical, psychological and medical terminology. The current transcript rate for these cases is \$3.55 per page for the original and \$.25 per page for copies. The Union requests that the rate be increased to \$4.75 per page for the original and remain at \$.25 per page for copies. The increased rate would be consistent with the current rate for civil transcripts.

Additionally, the Court Reporters request that guidelines be established for the preparation of Sexual Psychopathic Personality/Sexually Dangerous Person transcripts. The materials submitted by Ms. Schleusner also illustrate this issue. Briefly, Court Reporters are not being notified in a timely manner that a transcript needs to be prepared but, once they are notified, must prepare them in a very hurried fashion. The inherent difficulty of preparing the transcript is thereby compounded by the pressure of an imminent deadline. The Court Reporters request that, depending upon the size of the transcript, they be given at least thirty to sixty days to complete it in these types of cases.


Ms. Sue Dosal
June 8, 2006

Page -2-

Thank you for consideration of these matters. If you have any questions, or would like more information, please contact me at 612-269-1745.

Sincerely,

TEAMSTERS LOCAL 320



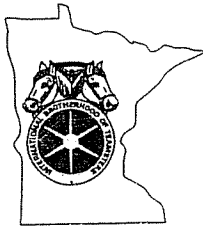
KARI SEIME
Business Agent

KS/mt

opeiu#12

Enc.

c: Stewards
Diana Williams, State Court Administration
Walter Wojcik, State Court Administration
CourtReporters\GenCorr\SDosal.



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June 19, 2006

Faxed and mailed 651-297-5636

Ms. Sue Dosal, State Court Administration
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: TRANSCRIPT COPY RATE REQUEST

Dear Ms. Dosal:

In my previous letter to you regarding Transcript Rates, I inadvertently neglected to include a request to increase the transcript copy rate to \$.30 per page for all types of transcripts. The rate is currently \$.25 per page.

Please contact me if you have any questions about this matter. The best place to call is my cell phone at 612-269-1745.

Sincerely,

TEAMSTERS LOCAL 320

KARI SEIME
Business Agent

KS/mt
opeiu#12
Enc.

c: Court Reporter Stewards
Diana Williams, State Court Administration
Walter Wojcik, State Court Administration
Bob Pflipsen, State Court Administration Stewards
CourtReporters\GenCorr\SDosal.

MEMORANDUM

Date: June 5th, 2006

To: The Judicial Council

From: Jane Schleusner,
Official Court Reporter
Tenth Judicial District

Enclosed herein please find our submissions with regard to our request to increase the Informa Pauperis Transcript Rates as they relate to the Sexual Psychopathic Personality/Sexually Dangerous Person hearings and trials that are now being heard throughout our state.

Currently the IFP rate for these types of hearings is set at the rate of \$3.55 for the original and \$.25 per copy. A copy of the April 1, 2004, Order is attached. This rate was ordered by the Conference of Chief Judges effective April 1, 2004. At that time, there was a severe budget concern; and, the Conference was cognizant of the fact that IFP matters would be paid for by the State of Minnesota. However, because of the very difficult nature of the testimony, which includes technical, statistical, mathematical, psychological and medical terminology, we would respectfully request that the low IFP rate for these types of hearings and trials be reviewed by the Council.

In the last couple of years, the courts in our state have been inundated with the Sexual Psychopathic Personality/Sexually Dangerous Persons cases. I personally have been involved with three such trials in the last 18 months. These cases are very very difficult to report. They are completely different than any other type of civil commitment hearing. They involve a great deal of skill and an inordinate amount of time to prepare the transcripts. I have been a reporter for 33 years, and in my opinion, these are some of the most difficult matters that any reporter can face in their career.

Enclosed please find my list of the words and phrases for the sexual psychopathic personality and sexually dangerous person trials. I have developed this list from the first two trials that I have reported; and, this list will increase after I have prepared the third transcript. Also find enclosed a small portion of a trial that was heard in October of 2005. This is just a glimpse at the type of material that we must deal with during the course of these hearings.

Also enclosed please find a synopsis of the law and procedures in these cases which my judge, Judge Hancock, has developed for herself and other judges who are

beginning to hear these types of cases. At the end of Judge Hancock's synopsis is included the statutes and Rules that apply to the preparation of the transcript.

Based on the fact that these trials are extremely difficult to report; require a great deal of skill and experience; and, take at least three times the normal time to prepare for appeal, the Official Court Reporters in the State of Minnesota would request an increase in the IFP rate as pertains to these types of matters only. We would respectfully request that the IFP rate as pertaining to the Sexual Psychopathic Personality/Sexually Dangerous Person be increased to the current civil rates of \$4.75 for the original and \$.25 per copy.

An additional request that the Official Court Reporters of the State of Minnesota would have would be that some guidelines be established as to the appellate process as regards the preparation of the transcript.

After the trial there is the briefing schedule; the Court's preparation of its Order schedule; the Review Hearing; and then the Court's final Order. In the two cases that I have had, both Respondents were indefinitely committed.

Official Court Reporters are "creatures of the law." We operate under Rule 110.02 of the Rules of Civil Procedure when an appeal occurs. Under Subdivision 1 it states as follows:

Subd. 1. Duty to Order Transcript. Within ten days after filing the notice of Appeal, the appellant shall:

- (a) pursuant to Subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record; or
- (b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04 ...

Subd. 2. Transcript Certificates.

- (a) If any part of the proceedings is to be transcribed by a reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within ten days of the date the transcript was ordered...
- (b) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery

Subd. 3. Overdue Transcripts.

... A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

These are the portions of the Rules that the Official Court Reporters in the State of Minnesota are familiar with, work under, and rely upon in our day-to-day functions.

In the Sexual Psychopathic Personality/Sexually Dangerous Person trials, there are no such familiar rules in place.

The Statutes/Rules for Civil Commitment cases are governed by Minnesota Statute Section 253B.19 Subd. 2, which reads in part as follows:

Minn. Stat. 253B.19

... The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing.

As you can see, there is no direct notification to the court reporter mandated in this statute. This lack of notification has caused many problems throughout the state.

There are many stories of reporters not being notified of the appeal by anyone until it was merely days before the transcript was due. In one case in the State of Minnesota one of our reporters was not notified of the appeal until only a week remained for the preparation of the transcript. The reporter called the Court of Appeals Clerk's Office and was told that the transcript was due in a week and if the Reporter didn't have the transcript completed on time, that Reporter may not get paid. The Official Reporter had to take a week of vacation in order to prepare the transcript.

The Official Court Reporter had received no customary notice from anyone that there was an appeal pending and that a transcript was necessary. In the case of the writer, I too have experienced this dilemma. In my first Sexual Psychopathic Personality trial, I was concerned that I would not receive notice as to the appeal. I contacted the Clerk of Court of the Court of Appeals as to if an appeal had been filed and when I should expect any notice. I was told that there was no process in place to notice the Official Court Reporter directly and that we reporters needed "to fix this problem." It is a pervasive problem throughout the state and we are requesting judicial intervention.

Enclosed also please find an Order relating to my second trial. The Order is dated May 23, 2006. The pertinent part of this Order states as follows:

1. As a transcript is desired, appellant shall immediately notify the court reporter the transcript is due on or before June 16, 2006.

This Order was received in the Court Administrator's Office on May 24th, 2006 and stamp filed that day. It then made its way back to my judge's desk through our normal filing procedures. Judge Hancock then showed me the Order on the 30th of May at 1:30 p.m. If I had not been in touch with all counsel well in advance of this date and knew that there was an appeal coming so that I was able to work on this difficult transcript in advance; and, if this was the only notice that I had received, I would have had two and a half weeks to prepare this most difficult transcript. Timely preparation of this transcript most certainly would have required me taking my own hard-earned vacation time so that I would be in compliance with the Court's Order.

Because these trials are so very difficult; and, because these are trials that are akin to a murder trial in that the consequences are so severe; and, because the Official Court Reporters in this state are very conscientious and attempt to be in full compliance with any and all court orders, we are requesting that the Council review this issue and perhaps implement some new policies that would mandate timely notification to the Court Reporters. We are also requesting that the time we reporters have to prepare these difficult transcripts be delineated, so that we know exactly what is expected of us in these most important matters. We would request the Council consider allowing at least thirty to sixty days (depending on the size of the transcript) for completion. Again, these are some of the most technical and difficult transcripts any of us have ever done and will ever do in our careers.

Thank you for your considerations in these matters.

JS

MINNESOTA STATE COURT SYSTEM Administrative Policy No. 23

SUBJECT: STANDARD STATEWIDE OFFICIAL COURT REPORTER TRANSCRIPT RATES

The Conference of Chief Judges met on March 19, 2004 and April 16, 2004 and considered issues raised with respect to the promulgation of standard statewide page rates for preparation of transcripts by official court reporters.

With respect to that subject and the questions raised, and with consent and approval of the Conference of Chief Judges and Assistant Chief Judges, the State Court Administrator hereby issues the following administrative policy:

1. The Criminal transcript rate is set at \$3.25 per page for an original and .25 for each copy, effective for all transcripts ordered on or after April 1, 2004.
2. The Civil transcript rate is set at \$4.75 per page for an original and .25 for each copy, effective for all transcripts ordered on or after April 1, 2004.
3. The transcript rate for IFP cases is set at \$3.55 per page for an original and .25 for each copy, effective for all transcripts ordered on or after April 16, 2004.
4. Effective April 1, 2004, the transcript rate for all expedited transcripts ordered shall be negotiable between the Official Court Reporter and the requesting party.
5. The Conference of Chief Judges will review this policy in 2005 and every odd numbered year thereafter.

Effective Date: April 1, 2004

WORDS AND PHRASES FOR
SEXUAL PSYCHOPATHIC PERSONALITY
SEXUALLY DANGEROUS PERSON

JANE'S LIST

SDP and SPP statutes

Dr. James Alsdurf,

Dr. James Gilbertson,

Dr. Peter Meyers

Dr. Rita St. George,

Dr. Patnode-Jones

Linehan case,

Blodgett case, the Bieganowski case, the PirkI case, the Irwin case

Frotterurism

Frottage

Paraphilia NOS

Voyeurism

Narcissism

Minnesota Sex Inventory

Millon Multiaxial Personality Assessment

Psychopathic Checklist Revises ----- PCL-R

Multiphasic Sex Inventory

MMPI – II

Sex Offender Risk Appraisal Guide ----- SORAG

VRAG

Phallometric assessment

penile plethysmograph

Minnesota Extended Options -----METO

SRV – 20

Wexler Abbreviated Scale ----- WAIS

PCLR – 2

Minnesota Sex Offender Screening Tool ----- MnSOST-R

MCMI – III

MSI – II

STATIC 99

PCL- R – SV

Dysthymia

Personality Disorder NOS

Ogant

Gene Abel (Georgia researcher

Perseverative thinking

Psychological epiphenomenon

Penis thermography

Hare Psychopathy Checklist, Revised (the Hare)

Ray Knight and Prensky

Howard Barbaree

Janus and Meehl

Haling

hyperarousal

hypoarousal

admixture

ICDM – 9

ICDM – 10

Fruend (psychopathologist)

Erotized
Kaiser Permanente inpatient facility
HCR-20
Taxonomy
Superego lacunae
Steadman's study
Doren's 1998 study
MNSOSTR- Minnesota Sex Offender Screening Tool
Agnosia
Bigenowski
Perkl
Blodgett
Millon Clinical Multiaxial Inventory (MCMI III)
MCF
SEEC --
SOTP Sex Offender Transitional Program
MCF-LL Minnesota Corrections Facility-Lino Lakes, ML – MOOSE LAKE;
SCL – St. Cloud
CORE PROGRAM
Corrections Interpretive Report
St. Peter Sex Offender Program (SOP)
Schizoid
Kendall-Tackett
Pearson criteria
Somatic
Stepwise multi-variate technique
Coefficient Alpha & Chrombach's Alpha

Content significance @ $P < 0.1$.

CM child molester scale

Rapist Comparison Scale – RC

Cut-off T

Superoptimism Scale (recognizing excitement involved in offense.)

AXIS I, II, III, IV

Use of algorithmic predictive techniques

(Base rate for sexual recidivism – involves MNSOST-R, STATIC 99 and

RRASOR – Rapid Risk Assessment for Sex Offenders

AUC Area under the curve. – statistics.

Boer, Hart, Kropp and Webster -- Authors of SVR-20

Psychosocial Adjustment

Tennessee Warning

Hebophilia

Personality Assessment Inventory (PAI) T Scores

Polysubstance Dependence

Post-traumatic symptomology

Inter-rater

ECRC End of Confinement Commission

Seron and Amon – PLC-R (authors)

Doren

Harris and Hanson

Static 99, Hanson & Bussiere

Thorton

Criminogenic

Hanson & Morton-Bourgon (2004)

RICE -1990

HCR-20 (actuarial)

SORA --- SORAG

Langton – Harris

Seto

IRWIN NW. 2d 366

Recidivistic

Index Offense – Last offense used for testing.

VRAG (Like the SORAG, only for violence)

Quinsey – Author

Actuarial significance

(

COMMITMENT
SEXUAL PSYCHOPATHIC PERSONALITY [SPP]
SEXUALLY DANGEROUS PERSON [SDP]
(Updated May 8, 2006)

I. HISTORY

- A. 1939 – Psychopathic personality [**PP**] law passed by legislature.
- B. In State ex rel Pearson v. Probate Court¹ – statute given narrow interpretation in response to constitutional challenge:
 - “those persons who, by a [1] habitual course of misconduct in sexual matters, have evidenced an [2] utter lack of power to control their sexual impulses and who, as a result, are [3] likely to attack or otherwise inflict injury, loss, pain or other evil on the object of their uncontrolled and uncontrollable desire.”
- C. 1994 – legislature adopted “sexually dangerous person” statute recodified Psychopathic Personality (PP) law incorporating the Pearson definition and renaming it “Sexual Psychopathic Personality” law (SPP).

- II. Definition: “Sexual Psychopathic Personality” [**SPP**] means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced by a
 - [1] habitual course of misconduct in sexual matters, an
 - [2] utter lack of power to control the person's sexual impulses and, as a result, is
 - [3] dangerous to other persons.

Minn.Stat. § 253B.02, subd.18b (2002)

III. Burden of Proof – Standard- “Clear and Convincing Evidence”

IV. Habitual course of misconduct in sexual matters

A. Two inquiries:

- 1) Is nature of sexual misconduct sufficiently harmful to justify commitment?
- 2) Is person's sexual misconduct “habitual?”

B. Habitual course of misconduct (various case holdings)

¹ 205 Minn.545,555, 287 N.W.297, 302(1939), *aff'd* 309 U.S.270 (1940).

1. Multiple Victims not required.
2. Convictions not required.
3. Juvenile acts qualify.
4. Time gaps (even significant) between assaults doesn't defeat commitment. [court upheld commitment where 3 sexual assaults; two in one day and a third 16 yrs later(a 14yr prison term in interim)
5. **SPP** law does *not* require person to be "mentally ill"
6. Need not be "out of control" all the time

V. Utter lack of Power to control sexual impulses

- A. Appellate courts generally have concluded that planned or "planful" behavior is not inconsistent with an utter lack of power to control one's sexual impulses.
- B. "Grooming" behavior in a pedophile does not preclude a finding of utter lack of power to control sexual impulses.
- C. Appellant's failure to remove himself from situations that provide the opportunity for similar offenses and failure to avoid precursors that trigger impulsive behavior, such as consumption of large quantities of alcohol, demonstrate his lack of control.
- D. Lack of insight into sexual misconduct and the harm it produces relates to an inability to control sexual impulses. [and lack of remorse]
- E. Need not be out of control all the time. Pirkl, 531 NW.2d 902 (Minn.1995)
- F. When a person engages in behavior despite repeated consequences, it evidences a lack of control. [Prime example of utter lack of power to control one's sexual impulses is to sexually reoffend shortly after release from confinement or treatment. e.g. brazen-ness

VI. Blodgett factors [Sup Ct established list of factors to determine if a person meets the Pearson standard:

1. Nature and frequency of sexual assaults
2. degree of violence involved
3. relationship (or lack thereof) between offender & victims
4. offender's attitude and mood
5. offender's medical and family history
6. results of psychological and psychiatric testing and eval
7. such other factors that bear on predatory sex impulse and lack of power to control it.

VII. **SPP** Statute- Standard for Harmfulness

- A. In re Rickmyer, 519 N.W.2d 188, 190 (Minn.Ct. App.1994) court first articulated a standard for harmfulness. There may be instances where a pedophile's pattern of sexual misconduct is of such an egregious nature that

there is a *substantial likelihood of serious physical or mental harm being inflicted on the victims* such as to meet the requirements for commitment as a psychopathic personality. *Id.* at 190.

- B. *In re Preston*, 629 N.W.2d 104 (Minn Ct App 2001) held the mere act of sexual assault, at least that involving oral sexual contact or penetration with children, constitutes sexual violence.

VIII.1994 Legislature (spec.session) added new category for commitment:

SEXUALLY DANGEROUS PERSON [SDP]

A. Minn.Stat. § 253B.

Subd. 18c. Sexually Dangerous Person

- (a) A “sexually dangerous person” means a person who;
- (1) has engaged in a course of harmful sexual conduct as defined in subd. 7a
 - (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and
 - (3) as a result, is likely to engage in acts of harmful sexual conduct (as defined in 7a)
- (b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

Subd. 7a HARMFUL SEXUAL CONDUCT:

- (a) means sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.
- (b) there is a rebuttable presumption that conduct described in the following provisions creates a substantial likelihood that a victim will suffer serious physical or emotional harm. [crim/sex/conduct 1-4^o] plus numerous other felony statutes if crim/sex/conduct was goal.

- *In re Civil Commitment of Martin*, 661 N.W.2d 632, 639 (Minn. App. 2003) states that the “presumption is not that victim actually suffers serious emotional harm, but that the conduct creates a substantial likelihood of such harm.

C. **SDP** commitment category contains same three elements as *Pearson* standard

1. history of harmful sexual conduct
2. a disorder
3. the resulting likelihood of future harmful sexual conduct.

D. However, there are two significant changes:

1. mental disorder or dysfunction – i.e. the *definition* of disorder, and not “the utter-inability-to-control standard” applies.
2. the rebuttable presumption that “harmful sexual conduct” has occurred if various criminal statutes are violated.²

IX. Elements of **SDP** law

A. Course of Harmful Sexual Conduct. [FIRST requirement of **SDP** law]

1. In applying **SDP** law, court of appeals looked to dictionary definition of “course” to mean “a systematic or orderly succession; a sequence”
2. Court has upheld commitment based upon only two sexual assaults, but declined to set numerical limit. See *In re Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002).
3. Similarity, number of incidents, and reoffense soon after release may be considered in determining existence of a “course” of harmful sexual conduct.
4. Elimination of “habitual” requirement from **SDP** law indicates that evidence necessary to establish habitual nature of a course of sexual misconduct would not be necessary to establish a simple course of sexual misconduct.
5. “course of harmful sexual conduct” requirement of **SDP** law does not require greater proof than required by *Pearson* standard.
 - *In re Ramey*, 648 N.W.2d at 268, states that an “examination of whether an offender engaged in a course of harmful sexual conduct takes into account both conduct for which the offender was convicted and conduct that did not result in a conviction.”
 - *In re Irwin*, 529 N.W.2d 366, 374 (Minn. App. 1995) states that “because the statute considers a course of conduct, the incidents that establish the course will have occurred over a period of time and need not be recent.”
 - *In re Robb*, 622 N.W.2d 564, 573-74 (Minn. App. 2001) states that “the existence of a period in which a person has not committed sex offenses does not preclude a determination that he engaged in a course of sexual misconduct.”
 - *In re Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) held that even though the State is required to show by clear and convincing evidence all of the elements required for involuntary commitment under the SDP statute, including course of conduct that satisfies the definition of

² “Rebuttable presumption” does not unconstitutionally shift burden to respondent. *In re Kindschy*, 634 N.W.2d 723 (Minn. App. 2001). *In re Linehan*, 544 N.W.2d 308 (Minn.Ct.App. 1996, vac./remand 522 U.S.1011 (1997); *aff’d as modif* 594N.W.2d 867 (Minn.1999).

harmful sexual conduct, the State is NOT required to show that the incidents of harmful sexual conduct are the same or similar harmful sexual conduct.

- o Facts of *Stone*: The court noted that although many of Stone's aggressive interactions with young girls did not involve sexual relations, the acts were nonetheless part of a course of harmful sexual conduct. *Id.* at 839.

B. Mental Disorder [SECOND requirement of **SDP** law]

1. Defined: Person has manifested a sexual, personality, or other mental disorder or dysfunction.
2. Although stated in past tense, clearly person *must currently have such a disorder* to be committed.
3. Terms "sexual disorder," "personality disorder" and "other mental disorder" as used in DSM-IV
4. Term "dysfunction" used where person may have essential features of recognized disorder, but not meet all diagnostic criteria of DSM-IV.
5. Even though **SDP** provision of commitment act incorporates the *procedures* for commitment of mentally ill and dangerous persons, the commitment act does not require that a person committed as **SDP** be "mentally ill."

C. Inability to adequately control (I.e. Significant likelihood of re-offense)

1. In upholding the constitutionality of the **SDP** law, the MN Sup Ct interpreted the law to contain a requirement that the person's mental "disorder or dysfunction does not allow [him] to *adequately control* [his] sexual impulses." 594 N.W.2d at 876 (Minn.1999)
2. This is a departure from the "difficult if not impossible to control" standard.
3. It is not necessary that the person lack adequate control at all times, if at some times he lacks such control. *In re Robb*, 622 N.W.2d 564, 573 (Minn.Ct.App.2001).
4. *Kansas v. Crane*, 534 U.S. 407 (2002) requires that there be a finding of "lack of control" of sexual conduct, based on expert opinion tying that "lack of control" to a diagnosed mental abnormality or personality disorder, before a person may be committed as a sexually dangerous person (holding of *In re Martinelli*, 649 N.W.2d 886 (Minn. App. 2002).
 - i. The Supreme Court in *Crane* reiterated that a complete lack of ability to control is not required (*Crane*, 534 U.S. at 413 (citing *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997))).
 - ii. *Crane* did not lay down any "bright-line rules" regarding lack of control and emphasized the leeway under *Hendricks*.

- iii. The Minnesota Court of Appeals in *Martinelli* stated that the "lack of adequate control" standard applied here, when read along with the language in *Linehan IV* requiring a "mental abnormality" or "personality disorder" making it "difficult, if not impossible" for that person to control his sexual conduct, satisfies the constitutional standard set by *Crane*. See *Martinelli*, 649 N.W.2d at 890 (citing *Linehan IV*, 594 N.W.2d at 875, quoting *Hendricks*, 521 U.S. at 358).
- iv. *Martinelli* court also noted that the *Ramey* case upheld the *Linehan IV* "lack of control" standard against a vagueness challenge. *Ramey*, 648 N.W.2d 260 (Minn. App. 2002).

D. Harm to victims.

- 1. Not necessary to show injury to past victims.
- 2. No proof necessary that victims actually suffered harm: sufficient that there is a substantial *likelihood of serious physical or mental harm being inflicted*.
- 3. Likelihood of Harmful Sexual Conduct:
 - A. **SDP** law requires that proposed patient "likely to engage in acts of harmful sexual conduct."
 - B. "Likely" must mean "highly likely"
 - C. On basis of *Linehan III* it can be argued that "highly likely" applies to both **SDP** and **SPP** law.
- 4. Assessment of likelihood of sexual reoffense.
 - (a) Under each statute trial court must assess likelihood that person will engage in additional harmful sexual conduct.
 - (b) *Linehan I* court offered guidance to trial court (518 N.W.2d at 614); consider:
 - (1) person's relevant demographic charac.(age,education...)
 - (2) history of violent behavior.
 - (3) base rate statistics for violent behavior among individuals of this person's background
 - (4) sources of stress in the environment (cognitive & affective factors)
 - (5) similarity of present/future context to those contexts where person has used violence in past
 - (6) person's record with sex therapy programs
 - (c) Court has held good behavior in artificial atmosphere of prison or hospital is not determinative where other evidence indicates likelihood of reoffense.

6. Least Restrictive Alternative standard applicable to commitment for mental illness, mental retardation and chem. dep. does *not* apply to commitments as mentally ill and dangerous (MI&D), **SPP** or **SDP**.³
7. Not necessary that proposed patient be “treatable” in order to be committed.

³ Minn. Stat. § 253B.18-253B.19: 1999 new provision added to MI&D, SPP and SDP law: Proposed patient permitted, by clear and convincing evidence, to show a less restrictive treatment program available that is consistent with pt's tx needs and requirements of public safety. Otherwise, court *SHALL* commit pt to secure tx facility.

X. Procedural Issues.

- A. DOC refer case to Co Atty at least a year before person's prison release date. (Minn.Stat. §244.05, subd.7(2002))
- B. An appeal will not be dismissed merely because this timeline was not met.
- C. Rules of Crim Proc. do not apply.
- D. Petition
 - a. Petitioner must have knowledge of the facts.
 - b. Prepetition screening & Examiner's statement do *not* apply.
 - c. Petition *may* be dismissed w/o prejudice to bringing another petition. (under certain circumstances)
- E. Prehearing conferences are available (MnRCivP16)
- F. Party should have opportunity to prepare – continuances should be liberally granted.* Hearing must be held w/in 14 days; may be extended for up to 30 add'l days for good cause; Proposed patient may waive the 44-day requirement.
- G. Changes of venue are w/in discretion of trial court.
- H. Proposed patient has right to be present.
- I. Privilege against self-incrimination generally not applicable because civil process. However, may be invoked on question by question basis.
- J. PreTrial Hold Orders
 - a. Court may order proposed pt held in tx facility pending decision on pet.
 - b. Cannot be for more than 72 hours unless court holds a prelim hearing.
 - c. At prelim hearing court may consider reliable hearsay, including written materials.
 - d. Proposed patient must receive at least 24 hr notice of prelim hearing.
- K. Discovery is available – civil rules apply
 - a. Treatment and juvenile records may be used in commitment proceeding where petitioner obtains them pursuant to court order and Proposed patient has notice of the order.
 - b. Fact that "Tennessee warning" may not have been given when data was collected does not make the data inadmissible.
 - c. Records may be obtained and used notwithstanding any provision of the Data Practices Act. (Minn.Stat. §253B185, subd.1b)
 - d. Records may be shared with petitioner's expert witness.
- L. Expert Witnesses and Examiners.
 - 1. Proposed patient should not benefit from refusing to be interviewed by Petitioner's expert.
 - 2. Psychologist allowed to testify even though had not interviewed the patient where patient refused to talk w/psych.
 - 3. Court did not abuse discretion by allowing Petitioner's expert to listen to testimony of ct apptd examiner and then testify afterward.
 - 4. Court does not abuse its discretion by allowing examiners to testify to "ultimate questions" of whether the person is **SPP** or **SDP**. See *In re Jackson*, 658 N.W.2d 219 (Minn. App. 2003).

- M. No Jury Trial (Poole v. Goodno-MN DHS, 335 F.3d 705 (8th Circ. 2003))
- a. State court's decision that convicted sex offender was not entitled to a jury trial in a civil commitment proceeding was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court, as would warrant federal habeas relief; Supreme Court never held that due process or the Seventh Amendment right to a jury required a jury trial in civil commitment proceedings.

N. TRIAL

Generally:

1. Proposed patient is not allowed to represent himself under commitment rules.
2. Use of depositions at trial governed by Rules of Civ Pro.
3. Testimony by telephone or interactive TV allowed if 24 hr notice to other party.
4. Allowing (2) victims to testify outside presence of Proposed patient okay if Judge can view witnesses to observe indicia of credibility and Proposed patient & atty can hear testimony and question the witnesses.
[confrontation clause doesn't apply – civil proceeding.]
5. Trial court has discretion to limit length of cross-examination.

Evidentiary Issues:

6. Presumption in favor of admissibility applies to all commitment cases.
7. Ct of Appeals has held rules of evidence inapplicable to commitment proceeding.
8. Trial court did not abuse its discretion by admitting hearsay statements of a victim under Minn.R.Evid. 804(b)(5) where victim couldn't be found, circumstances suggested reliability, victim's statements partially corroborated by the friend's own observations and, Proposed patient had admitted some of the facts previously related by the victim.
9. A pre-petition screening report admissible under Minn.R.Evid.803(8)
10. DOC assessments properly admitted under same provision even where they contained opinions.
11. Proposed patient's counseling and treatment files are not privileged per commitment statute.

Proposed Findings:

1. Caution against verbatim adoption of one party's proposed findings
2. Need no findings regarding less restrictive alternatives

O. Review Hearing

1. Under 253B.18, subd.2 (2002) court must hold a review hearing after receiving treatment report from facility where person committed.
2. Evidence at hearing limited to: statutorily required tx report; evidence of changes in patient's condition since

commitment hearing; such other evid as in court's discretion enhances its assessment of whether patient continues to meet statutory criteria for commitment.

3. Since issue is whether patient's condition has changed, court need not make new findings as to whether he meets standards for commitment.
4. Court may deny patient's request for new second examiner for review hearing.
5. Under statute, review hearing must be held, at latest, w/in 90 days after initial commitment. [if still in prison, time does not run until patient transferred to tx facility.] [Can only be continued with agreement of *both* parties, and then for no more than one year.

P. Appeal

1. Patient can wait until after indeterminate commitment and then appeal both the initial and indeterminate commitment orders.
2. Patient need not raise evid. issues in mot for new trial to preserve them for appeal.
3. Appellate standard of review: findings will be aff'd if supported by record as whole and not clearly erroneous.
4. Standard of review for determination of whether proposed patient satisfies commitment requirements is more confusing. See Linnehan I and Linnehan III.

TIMELINES FOR NOTICE OF APPEAL

STATUTE/RULES for CIVIL COMMITMENT CASES:

Minnesota Statute section 253B.19: Judicial appeal panel; patients who are mentally ill and dangerous to the public

Subd. 2. Petition; hearing. The committed person or the county attorney of the county from which a patient was committed as a person who is mentally ill and dangerous to the public, or as a sexual psychopathic personality or as a sexually dangerous person may petition the appeal panel for a rehearing and reconsideration of a decision by the commissioner. The petition shall be filed with the supreme court within 30 days after the decision of the commissioner is signed. The supreme court shall refer the petition to the chief judge of the appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing. The hearing shall be within 45 days of the filing of the petition unless an extension is granted for good cause. Any person may oppose the petition. The appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, patient's counsel, and the county attorney of the committing county may be present and present and cross-examine all witnesses. The petitioning party bears the burden of going forward with the evidence. The party opposing discharge bears the burden of proof by clear and convincing evidence that the respondent is in need of commitment.

STANDARD RULES for CIVIL APPELLATE PROCEDURE:

Rules of Civil Appellate Procedure, Rule 110.02: The Transcript of Proceedings; Duty of Appellant to Order; Notice to Respondent if Partial Transcript is Ordered; Duty of Reporter; Form of Transcript

Subdivision 1. Duty to Order Transcript. Within 10 days after filing the notice of appeal, the appellant shall:

- (a) pursuant to subdivision 2 of this rule, order from the reporter a transcript of those parts of the proceedings not already part of the record which are deemed necessary for inclusion in the record; or
- (b) file a notice of intent to proceed pursuant to Rule 110.03 or Rule 110.04; or
- (c) notify the respondent in writing that no transcript or statement will be ordered or prepared.

If the entire transcript is not to be included, the appellant, within the 10 days, shall file and serve on the respondent a description of the parts of the transcript which appellant intends to include in the record and a statement of the issues intended to be presented on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, respondent shall order, within 10 days of service of the description or notification of no transcript, those other parts from the reporter, pursuant to subdivision 2 of this rule, or serve and file a motion in the trial court for an order requiring the appellant to do so. A copy of any order of the trial court affecting the transcript shall be filed by the appellant with the clerk of the appellate courts.

Subd. 2. Transcript Certificates. (a) If any part of the proceedings is to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to the trial court and all counsel of record within 10 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; a statement that satisfactory financial arrangements have been made for the transcription; and the court reporter's address and telephone number.

(b) Upon filing of the transcript with the trial court administrator and delivery to counsel of record, the reporter shall file with the clerk of the appellate courts a certificate of filing and delivery. The certificate shall identify the transcript(s) delivered; specify the dates of filing of the transcript with the trial court administrator and delivery to counsel; and shall indicate the method of delivery. The certificate shall also contain the court reporter's address and telephone number.

Subd. 3. Overdue Transcripts. If any party deems the period of time set by the reporter to be excessive or insufficient, or if the reporter needs an extension of time for completion of the transcript, the party or reporter may request a different period of time within which the transcript must be delivered by written motion to the appellate court pursuant to Rule 127, showing good cause therefor. A justice, judge or a person designated by the appellate court shall act as a referee in hearing the motion and shall file with the appellate court appropriate findings and recommendations for a dispositional order. A failure to comply with the order of the appellate court fixing a time within which the transcript must be delivered may be punished as a contempt of court. The appellate court may declare a reporter ineligible to act as an official court reporter in any court proceeding and prohibit the reporter from performing any private reporting work until the overdue transcript is filed.

RECEIVED

MAY 26 2006

COURT ADMINISTRATOR
SHERBURNE CO., ELK RIVER, MN

STATE OF MINNESOTA

IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS

MAY 24 2006

FILED

In the Matter of the Civil Commitment

of: [REDACTED]

ORDER

#A06-956

WHEREAS, Minn. Stat. § 253B.23, subd. 7 (2004), requires that this appeal be heard within 90 days of the notice of appeal, which was filed May 22, 2006.

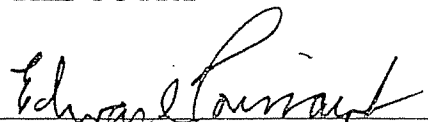
IT IS HEREBY ORDERED:

1. As a transcript is desired, appellant shall immediately notify the court reporter the transcript is due on or before June 16, 2006.
2. Appellant shall serve and file a brief on or before July 5, 2006.
3. Respondent shall serve and file a brief on or before July 24, 2006.
4. Oral argument is not requested by appellant. This appeal will be submitted on the record and briefs on August 21, 2006.
5. Subject to substitution, the judges assigned to decide the case are:

Judge Christopher J. Dietzen, Presiding
Judge Bruce D. Willis
Judge Kevin G. Ross

Dated: May 23, 2006

BY THE COURT


Chief Judge

CLL:mbs
not sent to me.
no notice from
anyone. This was
received in Ct Admin
on 5/24/06. Duties ordered by

Judge Hancock handed
me this order on
May 30 @ 1:30 p.m. -
2 weeks - 2 days to do